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Kimberly A. Scardino
Associate Counsel
Federal Advocacy

1133 19th Street, NW
Washington, DC 20036
202 736 6478
Fax 202 736 6492

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October 9, 2001

OCT - 9 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY


Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW B-204
Washington, D.C. 20554

Re: *Third Notice of Inquiry, CC Docket No. 98-146*

Dear Ms. Salas:

Attached please find an original and four copies of WorldCom's Reply Comments on the Commission's Third Notice of Inquiry Under Section 706. Please do not hesitate to contact me with any questions.

Sincerely,


Kimberly Scardino

Enclosure

cc: Ellen Blackler

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Before the
FEDERAL COMMUNICATIONS COMMISSION

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OCT - 9 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Inquiry Concerning the Deployment of
Advanced Telecommunications Capability to
All Americans in a Reasonable and Timely
Fashion, and Possible Steps to Accelerate Such
Deployment Pursuant to Section 706 of the
Telecommunications Act of 1996

CC Docket No. 98-146

**REPLY COMMENTS OF WORLDCOM, INC.
ON THIRD NOTICE OF INQUIRY UNDER SECTION 706**

WorldCom hereby submits its reply to comments filed on the Commission's Third Notice of Inquiry into whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.¹

I. INTRODUCTION & SUMMARY

In its initial comments, dated September 24, 2001, WorldCom encouraged the Commission to take steps to ensure that DSL services are deployed in a competitive fashion. Because the Commission's data shows that the ILECs have a monopoly over ADSL services,² WorldCom urged the Commission to collect and disseminate additional information on the factors that impact DSL subscribership in the United States. More

¹ Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, Third Notice of Inquiry, released August 10, 2001 ("Notice").

² "Federal Communications Commission Releases Data On High-Speed Services For Internet Access," CCB/IAD Report released Aug. 9, 2001, available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0801.pdf ("FCC Data on High Speed Services"). The FCC's Data on High Speed Services reported that ILECs had 92% of all ADSL lines in service as of December 31, 2000.

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importantly, WorldCom requested that Commission enforce the Telecommunications Act and resolve the advanced services issues that have been pending before the Commission for over a year. Enforcement of the Act and resolution of the advanced services issues are an absolute prerequisite to preserving existing DSL competition and encouraging meaningful competition in this market.

The four Bell Companies and their trade association, USTA, filed comments on the need for deregulation of DSL. In addition, the Bells convinced equipment manufacturer Intel and three other groups to join the campaign, all of which inappropriately tie the lack of DSL deployment and infrastructure investment to supposed onerous regulatory requirements imposed on the Bells but not on other providers. It is apparent from these comments that the deregulation debate has shifted from Capital Hill back to the Commission once again. Like the politicians and consumers who have been inundated with misleading Bell advertisements about the Tauzin-Dingell Bill, the Commission must ignore the Bell regulatory campaign and focus on the real issue at hand—the Bells want to retain their monopoly over the last mile facility, the same facility that is essential for competitive DSL access.

Subsequent to filing its initial comments, WorldCom received approval from a bankruptcy court to purchase Rhythms' DSL-related assets located in over 700 central offices across the United States.³ The acquisition of Rhythms' assets will allow WorldCom to offer competitive facilities-based DSL services in over 30 cities. However, WorldCom's DSL offering will be jeopardized if the Commission does not enforce the pro-competitive provisions of the Telecommunications Act. WorldCom must have

³ See WorldCom's press release, "WorldCom Gains Approval to Acquire Key Rhythms DSL Assets, dated September 25, 2001 (attached hereto as Attachment A.)

nondiscriminatory access to ILEC loops, including timely provisioning intervals, OSSs and other UNEs necessary to offer advanced services. Moreover, WorldCom must be able to secure timely and cost-based collocation in ILEC central offices.

In seeking deregulation of advanced services, the Bells are in essence asking the Commission to undo the requirements of the Telecommunications Act of 1996—something the Commission refused to do in 1998 when the Bells first requested it. The current federal regulations do not impair the ILECs' ability to compete against other broadband providers and do not thwart broadband investment, especially since the BOCs are receiving state subsidies to deploy advanced services. If the Commission fails to enforce the requirements of the 1996 Act, consumers and businesses alike will be captive to higher prices and less-than-innovative DSL products.

II. JUST AS IT DID IN 1998, THE COMMISSION MUST REJECT BELL ARGUMENTS FOR DEREGULATION OF ADVANCED SERVICES

Five years after passage of the Telecommunications Act of 1996, the Bell Companies—Verizon, SBC, Qwest and BellSouth—have tried just about everything to get out from under their obligations to provide access to their networks, especially access to the last mile facility known as the loop. The Bells have challenged the majority of Commission orders establishing rules for competitive access. In 1998—just two years after passage of the Act—the BOCs tried unsuccessfully to escape their obligations under the Act by seeking regulatory forbearance from the Commission and the ability to provide xDSL-based services in a deregulated environment.⁴ In its *Advanced Services Order*, the Commission rejected the BOCs' arguments, finding that the pro-competitive

⁴ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, FCC 98-188, CC Docket No. 98-147, rel. August 7, 1998 ("Advanced Services Order.")

provisions of the 1996 Act apply equally to advanced services and to circuit-switched voice services, and incumbent LECs are subject to the unbundling obligations of section 251(c).⁵ The Commission specifically stated that all ILECs must provide requesting carriers with unbundled loops capable of transporting high-speed digital signals.⁶ In addition, concluding that it lacked authority under the Act to do so, the Commission denied requests from the BOCs to forebear from applying the requirements of section 251(c) and 271 with respect to their provision of advanced services.⁷

Having had little success in convincing the Commission and the courts in the late nineties to undo the requirements of the Telecom Act,⁸ the Bells moved the battle back to Capitol Hill in 2000. For the past year and a half, the BOCs and their special interest groups have been pushing legislation in Congress that would accomplish the same result that the Commission rejected in 1998, and again in 1999: deregulation of advanced services. The legislation, known as the “Tauzin-Dingell” Bill,⁹ would effectively extend the BOCs’ telephone monopoly into a “digital monopoly” over consumers’ access to the Internet. The Consumer Federation of America says that the proposed legislation threatens consumers and “would retard the development of strong competition in the broadband Internet services market by denying competitors access to the existing local phone network, which they need in order to provide consumers with an alternative to the

⁵ *Id.* at ¶ 11.

⁶ *Id.* at ¶ 11.

⁷ *Id.* at ¶ 11.

⁸ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, FCC 99-143, CC Docket No. 98-147, rel. December 23, 1999 (affirming the Advanced Services Order.)

⁹ H.R. 1542, *The Internet Freedom and Broadband Deployment Act of 2001*. H.R. 1542 took place of H.R. 2420, which died with the close of the 106th Congress.

Bells' high speed (broadband) Internet service.”¹⁰ In addition, the National Association of Regulatory Utilities Commissioners (NARUC) states that the Tauzin-Dingell Bill “will seriously undermine the key local telephone market opening requirements contained in the Telecommunications Act of 1996, and guarantee years of costly and time-consuming litigation. In addition, the bill does nothing to stimulate or assure deployment of advanced services in rural areas.”¹¹ Many others have criticized the legislation and have called it for what it is—an attempt by the Bell Companies to undo the requirements of the Telecom Act.¹²

As the legislation sits in Congress, the Bells have come back to the FCC. This time, they seek the same thing as before: regulatory forbearance from the Commission. Nothing has changed since 1998 when the Commission first addressed this issue in the *Advanced Services Order*. Advanced services, such as DSL, are still telecommunications services subject to the pro-competitive provisions of the 1996 Act. Moreover, the Commission lacks the authority under section 706 to forebear from regulating under sections 251 and 271.

In their comments, Verizon, SBC, BellSouth and Qwest argue that the Commission should eliminate the regulatory rules burdening ILECs and forebear from regulating retail broadband services entirely. In an effort to somehow disguise their requests for relief, the Bells imply that there are onerous regulatory requirements that they must comply with for the provision of advanced services, and that somehow those

¹⁰ Press release and letter from Consumer Federation of America to Members of the House Committee on Energy and Commerce, dated April 25, 2001 (attached hereto as Attachment B).

¹¹ See Letter from NARUC to Chairman Billy Tauzin, dated April 24, 2000 (attached hereto as Attachment C).

¹² See “For whom the Bells still toll,” THE WASHINGTON TIMES, dated April 25, 2001, and “Ma Bell’s Arrogance, Multiplied,” LATimes.com, dated April 27, 2001 (attached hereto as Attachment D).

requirements are different from the rules for voice service. The fact is that the regulatory requirements relating to the delivery of advanced services to competitors are the same requirements as those for competitive voice service—access to the loop.

To provide DSL service to an end-user, a competitive provider must have access to the loop on rates, terms and conditions that are just, reasonable and nondiscriminatory. A competitor must collocate equipment on the ILEC's premises for interconnection and access to network elements. In addition, the CLEC needs access to the ILEC's OSS to order and maintain the loop. These unbundled network element and interconnection rules, which are set forth in section 251 of the Act, were designed to stimulate deployment of facilities-based telecommunications services, including advanced services, and to ensure that all markets are open to competition. Thus, the regulatory requirements that the BOCs are seeking to escape are the very ones set forth in section 251(c) of the Telecommunications Act.

Without the ability to gain access to the loop, by interconnecting with an incumbent LEC's network and accessing unbundled network elements, CLECs would not be able to provide DSL services. Regulating the terms and conditions for access to loops, collocation and unbundled network elements is essential because there is little to no incentive for the ILEC to comply with such requirements. Over the past several years, the Bells have pursued costly litigation to escape compliance with the Commission's rules. Moreover, rather than comply with the Telecom Act, the Bells have shelled out millions of dollars in penalties as a result of poor performance in the delivery of wholesale services to competitors.¹³ The Bells would rather pay penalties, which they

¹³ See "Phone start-ups tangle with giants. Small Companies say big fish make it tough to reel in customers," USA Today, August 21, 2001, page 1B, available at

calculate as a cost of doing business, than comply with the requirements of the Act. As Adelphia Business Solutions, a large facilities-based CLEC, points out, delay is more profitable for the Bells than compliance.¹⁴ Thus, there is no basis for granting the Bells' relief from their obligations under section 251(c) of the Act.

III. THE UNBUNDLING OBLIGATIONS OF THE 1996 ACT ARE NOT HARMING INCUMBENT PROVIDERS' ABILITY TO COMPETE AGAINST OTHER BROADBAND PROVIDERS

The Commission's statistics on DSL deployment for the year 2000 show that 92% of all ADSL lines were provided by incumbent local exchange carriers (ILECs), with the four RBOCs having over 1.7 million or 86.3% of all ADSL lines in service. This is compared to 162,225 or 5.5% of CLEC total ADSL lines. Moreover, ADSL deployment increased by 435% in one year. Despite this expansive growth, the Bells claim that current regulation thwarts the deployment of DSL services and provides no incentive for further broadband deployment.

First, the Bells argue that, because the Commission does not regulate cable-based broadband service, their advanced services should similarly be exempt from unbundling obligations. As Congressman Tom Davis (R,VA-11) explains in a letter to his constituents in response to the BOC argument that it cannot keep pace with cable deployment because of asymmetrical regulatory requirements:

Cable companies are not completely deregulated: they do face regulatory authority in their franchise agreements with local governments. In addition, the Bell companies build their networks over decades with a monopoly profit guaranteed by the government. Captive ratepayers paid for the Bells' infrastructure, and in exchange for granting the Bell system

<http://www.usatoday.com/usatoday/20010821/3560013s.htm> ("SBC has shelled out \$69 million in federal and state penalties since fall for failing to provide rivals with adequate service....And since March, BellSouth has been fined \$18.5 million by Georgia regulators.")

¹⁴ Comments of Adelphia Business Solutions, Inc. In Response to Third Notice of Inquiry, CC Docket 98-146, dated September 24, 2001.

a monopoly, the government mandated certain build-out requirements to help ensure affordable and universal phone service to every consumer. With a government-guaranteed monopoly rate of return, the Bells assumed no risk. In start contrast, the cable companies build their networks in the 1980s using private capital with no guaranteed profit. As well, I do not believe that a duopoly—where the only choices available to consumers are either the Bell company or the cable company—translates into competition.¹⁵

In addition, as stated earlier, the rules that the Bells are seeking to escape are the same rules that apply to voice. In seeking such relief, Verizon expressly states that “there would be no change in the UNEs a carrier providing voice service could obtain.”¹⁶ The Commission’s recent statistics on local voice competition show that competitors had less than 4% of lines in service at the end of 2000. Similarly, the Commission’s data on DSL deployment reveal that competitors had less than 8% of all ADSL lines in service for the same period. The Bells’ arguments do not add up—they are the dominant providers in both markets—both markets that rely on access to the loop for the provision of the service.

Second, the Bells claim that regulations are impairing their ability to invest in upgrades to their networks that will delivery broadband to consumers in rural areas. This argument, which is supported by equipment manufacturer Intel, is misleading and unsubstantiated. First, the Bells do have an incentive to expand the reach of their broadband networks. In many states, the ILECs are receiving subsidies in exchange for the promise of broadband deployment to rural areas. In addition, the Bells acknowledge that it is more efficient for them to push fiber deeper into neighborhoods to accommodate both voice and data traffic.

¹⁵ See Email letter from Tom Davis, Member of Congress, to constituent, dated September 5, 2001 (attached hereto as Attachment E).

¹⁶ Comments of Verizon on the Third Notice of Inquiry, CC Docket No. 98-146, dated September 24, 2001, at fn 52.

Second, Intel's argument that "extending unbundling regulation to new fiber and remote terminals deployed under SBC's Project Pronto could discourage such new last mile broadband investments"¹⁷ is misplaced. SBC reports that its Project Pronto initiative will "dramatically reduce its network cost structure" and that "expense and capital savings alone are expected to offset the cost of the entire initiative."¹⁸

In exchange for price cap regulation in Pennsylvania, Verizon has an obligation to deploy advanced services throughout the state. Similarly, in New Jersey, Verizon's Alternative Regulatory Plan was conditioned upon a commitment by Verizon to deploy full broadband capability by the year 2010. Likewise, Verizon has agreed to invest in at least \$375 million to upgrade its telecom infrastructure in West Virginia, in exchange for a five-year incentive-based alternative regulation plan.

Finally, allowing competitors access to the loop facility to provide DSL services is hardly something that should halt deployment of advanced services to rural areas. If CLECs are not able to access the full, features, functions and capabilities of fiber fed loops to provide broadband data services, they will be precluded from providing DSL services to any consumer served out of a remote terminal. The fact that the infrastructure that supports DSL has evolved into a fiber-fed Digital Loop Carrier (DLC) system does not change the requirement that CLECs have access to the loop and all its functionality.

IV. COMPETITION SPURS INNOVATION AND BRINGS LOWER PRICES

Before the 1996 Act, there were no competitive data providers in existence and the ILECs were not offering DSL services. While the Bells had ADSL technology, they chose not to deploy it, choosing instead to offer expensive fractional T-1 service to

¹⁷ Comments of Intel Corporation, CC Docket No. 98-146, dated September 24, 2001, at p. 12-13.

¹⁸ "SBC's \$6 Billion Project Pronto Initiative Brings DSL Internet to 80% of its Customers, available at www.sbc.com/data/network/0,2951,5,00.html (attached hereto as Attachment F).

businesses. A note published in the FEDERAL COMMUNICATIONS LAW JOURNAL on the dangers of the Tauzin-Dingell Bill appropriately captures the issue:

The passage of H.R. 1542 [Tauzin-Dingell] would result in grievous setbacks for consumers best illustrated by the technological environment before the 1996 Act, a time when the BOCs enjoyed a local exchange service monopoly. "It's important to note that the Bells had DSL technology but did not offer it. Instead, they offered the more expensive 'T-1' lines to businesses" "[I]ncumbents were selectively deploying only one form of DSL—called HDSL—and charging businesses upwards of \$1000 to \$1500 per month for this 'T1' service." The ILECs offered the significantly more expensive T1 service, despite the fact that "DSL technology has existed for more than 10 years." The ILECs' lackadaisical attitude toward the roll-out of fast, inexpensive technology changed dramatically with the introduction of competition into the local exchange market. "[S]purred by this growing broadband competition, the incumbent carriers have responded with their own burgeoning DSL deployment." The provision of DSL service "now appears to be driven by the threat of competition." This competition has not only induced ILECs to deploy DSL, and to do it faster, "but where competition exists, it is also forcing the incumbent carriers to reduce their DSL charges to consumers."¹⁹

One need not look any further than the recent price hikes by the BOCs after competitive data providers exited the DSL market as evidence of the harmful effects of the lack of competition in that market. THE WASHINGTON POST reported that the rise in broadband rates is due in part to the demise of competitive data providers: "After keeping rates flat for several years, several companies boosted their charges after several fledgling DSL service providers such as NorthPoint Communications Group, went out of business."²⁰ If the Commission allows the Bell Companies to continue to exploit their monopoly in the voice market to gain an advantageous position in the DSL market, we will continue to see higher prices for less-than-innovative services.

¹⁹ Jean F. Walker, "Paved with Good Intentions: How InterLATA Data Relief Undermines the Competitive Provisions of the 1996 Act," FEDERAL COMMUNICATIONS LAW JOURNAL, Vol. 53, No. 3, May 2001, at p. 553 (footnotes omitted) (Attached hereto as Attachment G) (citing statements from Covad and AT&T).

²⁰ "Broadband Market Growth Slows," THE WASHINGTON POST, August 28, 2001, at pp. E1, E10.

V. CONCLUSION

For the past five years, the Commission has worked hard to bring the benefits of competition to all Americans. The Commission should not undo all of its pro-competitive rules. Rather, the Commission can encourage the deployment of advanced services by enforcing the Telecommunications Act of 1996.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kimberly Scardino", with a long horizontal flourish extending to the right.

Kimberly Scardino
Associate Counsel, Federal Advocacy
WorldCom
1133 19th Street, NW
Washington, D.C. 20036
(202) 736-6478 (voice)
(202) 736-6492 (fax)
Kimberly.Scardino@wcom.com

Dated: October 9, 2001

CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Reply Comments of WorldCom, Inc. were sent via first class mail, postage paid, to the following on this 9th day of October 2001.

Ellen Blackler*
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Burt Braverman
Scott Thompson
Cole, Rayvid & Braverman
1919 Pennsylvania Avenue NW,
Suite 200
Washington, DC 20006

Qualex*
445 12th Street, SW
Washington, DC 20554

HAND DELIVERED*

Lawrence W. Katz
Verizon
1515 North Court House Road,
Suite 500
Arlington, VA 22201

Vivian Lee

Peter K. Pitsch
Intel Corporation
1634 I St, NW, Suite 300
Washington, DC 20006

Stephen L. Earnest
Richard M. Sharatta
BellSouth Corporation
675 West Peachtree Street, NE
Atlanta, GA 30375

Sharon J. Devine
Norman G. Cartright
Qwest Communications International,
Inc.
1020 19th NW
Washington, DC 20036

Anu Seam
Roger K. Toppins
SBC Communications, Inc.
1401 Eye Street, NW, Suite 1100
Washington, DC 20005

ATTACHMENT A

Media: Brad Burns
214-561-3200

Investors: Scott Hamilton
601-460-5111

Debbie Caplan
610-257-7974

WORLDCOM GAINS APPROVAL TO ACQUIRE KEY RHYTHMS DSL ASSETS

-- Transaction Inexpensively Advances WorldCom's Ability to Deliver Business-Class DSL for Data and Internet Services --

CLINTON, Miss. - September 25, 2001 - WorldCom (NASDAQ: WCOM), the leading global business data and Internet communications provider, today announced that it has received approval from the U.S. Bankruptcy Court to acquire key Rhythms DSL assets. This acquisition will enable WorldCom to continue delivery of its leading business-class DSL services that WorldCom data and Internet customers have come to rely on, while advancing WorldCom's broadband service strategy.

Under the terms of the agreement, WorldCom will purchase a portion of the Rhythms assets for \$40 million, which includes up to \$32 million of debtor-in-possession (DIP) financing sufficient to sustain Rhythms' network operations. As a result, WorldCom will deliver uninterrupted service to existing Rhythms customers served by the portion of the network that the Company is acquiring.

The acquisition will enable WorldCom to continue to deliver DSL access to a wide range of WorldCom services, including Internet, VPN, frame relay and ATM, through approximately 700 central offices in 31 major metropolitan areas where WorldCom already has a solid DSL customer base, including:

Atlanta, GA; Austin, TX; Baltimore, MD; Boston, MA; Chicago, IL; Cleveland, OH; Columbus, OH; Dallas, TX; Denver, CO; Detroit, MI; Houston, TX; Indianapolis, IN; Los Angeles, CA; Miami, FL; Milwaukee, WI; Minneapolis, MN; New York, NY; Northern New Jersey; Oakland, CA; Orange County, CA; Philadelphia, PA; Phoenix, AZ; Portland, OR; Raleigh, NC; Sacramento, CA; San Antonio, TX; San Diego, CA; San Francisco, CA; San Jose, CA; Seattle, WA; and Washington, D.C.

"The combination of Rhythms' DSL facilities and WorldCom's nationwide data and IP network infrastructure creates some of the industry's most compelling and robust business-class service offerings for our customers," said Ron Beaumont, WorldCom chief operating officer. "This acquisition inexpensively strengthens WorldCom's position as the premier provider of end-to-end, broadband data and Internet solutions for businesses around the world."

The acquired Rhythms assets will bolster WorldCom's portfolio of broadband solutions. WorldCom DSL services, provided on the Rhythms network, will offer a cost-effective incentive for companies to introduce new wide area network applications that require high-speed access links at multiple business locations. Rather than installing "fractional"

dedicated connections, customers will now be able to take advantage of WorldCom's DSL footprint. WorldCom business-class DSL services uniquely enable customers to access standalone or multiple data and Internet services over a single, integrated DSL access line.

DSL is an important component of WorldCom's leading delivery of data and Internet solutions for the digital generation. WorldCom today offers a variety of options for customers to access WorldCom's complete suite of data and Internet services, including DSL, wholly-owned fiber-optic metropolitan area network connections, MMDS fixed-wireless, dial-up and other dedicated connections, tailored to meet customers' unique budgetary, application and mobility requirements.

ABOUT WORLDCOM, INC.

WorldCom, Inc. (NASDAQ: WCOM, MCIT) is a preeminent global communications company for the digital generation, generation d, operating in more than 65 countries with 2000 revenues of approximately \$35 billion. WorldCom provides the innovative technologies and services that are the foundation for business in the 21st century. For more information, go to <http://www.worldcom.com>.

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ATTACHMENT B

For Immediate Release

*For more information:
Gene Kimmelman 202/462-6262
Mark Cooper 301/384-2204*

Proposed Legislation Threatens Consumers, Competition in Local Telephone and High Speed Internet Markets

(Washington, April 25, 2001) —Proposed legislation being debated today in the House Committee on Energy and Commerce will seriously harm the interests of American consumers and jeopardize competition in both local telephone and advanced internet services markets, according to the Consumer Federation of America (CFA) and Consumers Union (CU).

"The Internet Freedom and Broadband Deployment Act of 2001 would be a boon for the 'Baby Bells' but a disaster for consumers," said Mark Cooper, CFA's Director of Research. "After five years of fighting tooth and nail to eliminate the pro-competitive provisions of the Telecom Act, the Bells are being rewarded with a bill that will help them to maintain their local phone monopolies in almost every state and, at the same time, establish a new nationwide monopoly — this time in the broadband services market," Cooper added.

"If Congress is going to reopen the Telecom Act, consumers want a choice of high-speed Internet providers from both their cable and phone company, lower cable rates, lower local phone prices, and more competition for long distance that offers low per-minute rates with no monthly fees," stated Gene Kimmelman, co-director of Consumers Union's Washington office.

In a letter to Members of the Energy and Commerce Committee, CFA and CU today urged legislators to oppose the bill for the following reasons:

- The proposed legislation undermines the efficacy of the Telecommunications Act of 1996, and one of its primary objectives—to encourage vibrant local telephone competition.
- The bill, by allowing interLATA (long distance) data traffic, removes one of the best incentives for the "Baby Bells" to open their local markets to competition, thereby enabling the Bells to retain their current control over more than 95% of all local residential and small business lines.
- The bill would retard the development of strong competition in the broadband Internet services market by denying competitors access to the existing local phone network, which they need in order to provide consumers with an alternative to the Bells' high speed (broadband) Internet service.

Consumers Union, publisher of Consumer Reports, is an independent, nonprofit testing and information organization serving only consumers. CU is comprehensive source for unbiased advice about products and services, personal finance, health and nutrition, and other consumer concerns. Since 1936, CU's mission has been to test products, inform the public, and protect consumers. CU's income is derived solely from the sale of Consumer Reports and its other services, and from noncommercial contributions, grants, and fees. CU is online at www.consumersunion.org.

The Consumer Federation of America is the nation's largest consumer advocacy group, composed of two hundred and eighty state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power and cooperative organizations, with more than fifty million individual members. CFA is online at www.consumerfed.org.

April 25, 2001

The Honorable Members of the House Committee on Energy and Commerce
Washington, DC 20515

Dear Congresspersons:

On behalf of the Consumer Federation of America (CFA)¹ and Consumers Union (CU)², we respectfully urge you to oppose the Internet Freedom & Broadband Deployment Act of 2001.

We are concerned that this bill would have the opposite effect of its professed aim. It could limit broadband deployment by giving the Bell monopolies further leverage over consumers and increased power over the very competitive providers that have been responsible for the rapid growth of Internet services. If Congress is interested in giving consumers what they really want in telecommunications—more choice, competition, and lower prices for phone and cable services—Congress should crack down on monopolistic practices that impede the development of meaningful competition.

Although the 1996 Telecommunications Act (Telecom Act) has done virtually nothing to bring consumers competition for local phone service, the proposed legislation would further undermine its ability to do so. The central tenet of the Telecom Act is that local phone competition is desirable and possible. To encourage local competition, the Telecom Act offers the incumbent local exchange carriers (ILECs, also known as the "Baby Bells,") a carrot: they may provide long distance service (also known as interLATA service) in a state only after their local telephone markets are irreversibly open to competition.

The bill before you turns that key pro-competition and pro-consumer provision of the Telecom Act on its head. It would allow the incumbents to provide *interLATA* data services without first opening up their local telephone markets up to competition. The proposed legislation would thereby remove one of the best incentives for the "Baby Bells" to open their local phone markets up to authentic competition. The "Baby Bells" continue to control more than 95% percent of the local residential and small business phone lines in the country. Enacting this bill will make it far more difficult to persuade the incumbents to relinquish the monopoly that they continue to hold over local telephone service in virtually every state.

¹ The Consumer Federation of America is the nation's largest consumer advocacy group, composed of two hundred and eighty state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power and cooperative organizations, with more than fifty million individual members.

² Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

Further, the proposed legislation would retard the development of vigorous competition in the broadband Internet services market. Under the terms of the Telecom Act, the "Baby Bells" are required to grant competitors access to elements of the local phone network so that the latter may provide consumers with advanced high-speed ("broadband") services such as Digital Subscriber Line (DSL). As facilities-based competition has failed to materialize, network access is now widely regarded as the only real means of allowing competition to take root. Consumers increasingly rely on fast, reliable Internet connections to carry out everyday activities. Consumers are best served when they have a choice of high-speed Internet service providers, as competition works to generate innovative, quality services and better prices.

This bill would repeal this critical provision of the Telecom Act, and allow the incumbent local phone companies to deny competitors the access that they need to the existing phone network, thereby eliminating an essential ingredient of competition. The "Baby Bells" have created nearly insurmountable hurdles for the data CLEC (competitive local exchange carrier) industry by dragging their feet and denying competitors access. This bill rewards them for refusing to obey the law by removing the obligation to provide access to the network.

If Congress reopens the Telecom Act, consumers believe it should be to remove ongoing monopolistic practices that thwart competition and deny consumers greater choice and lower prices for telephone and cable services. Cable rates are up nearly three times the rate of inflation since the Act became law and no sign of meaningful competition to cable is in sight. Federally imposed fees on local phone bills will be up more than 50% by this July and no meaningful local phone competition is on the horizon. Cable monopolizes high-speed video services and local phone companies dominate the non-video high-speed market. Consumers need legislation to break open these markets and not allow either the local phone nor cable monopolies to expand their dominance and continue their refusal to compete head-to-head. Consumers want lower cable rates, a choice of high-speed Internet providers from both their cable and phone company, lower local phone prices, and more competition for long distance that offers low per-minute rates with no monthly fees.

Instead, this legislation benefits a handful of behemoth local phone companies that have spent the last five years doing everything in their power to undermine and eliminate potential competitive aspects of the Telecom Act. They deserve no reward for these efforts, let alone one handed to them on the backs and from the pockets of American consumers.

For these reasons, we respectfully urge you to oppose the Internet Freedom and Broadband Deployment Act of 2001 and instead consider legislation that truly delivers what Congress promised in 1996—more choices and lower prices for all telecommunications and cable services.

Sincerely,



Mark Cooper
Director of Research
Consumer Federation of America



Gene Kimmelman
Co-Director, Washington D.C. Office
Consumers Union

ATTACHMENT C



N A R U C

National Association of Regulatory Utility Commissioners

Bob Rowe, *President*
Montana Public Service Commission
Nora Mead Brownell, *First Vice President*
Pennsylvania Public Utility Commission
William M. Nugent, *Second Vice President*
Maine Public Utilities Commission

Allan T. Thoms, *Treasurer*
Iowa Utilities Board
Charles D. Gray, *Executive Director*
Washington, D.C. Office

April 24, 2000

The Honorable W.J. "Billy" Tauzin
Chairman, House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Tauzin:

On behalf of the National Association of Regulatory Utility Commissioners (NARUC), we respectfully urge you not to cosponsor or support the Internet Freedom and Broadband Deployment Act, sponsored by Reps. Tauzin and Dingell. This bill preempts state commission authority to regulate all rates, charges, terms and conditions for high speed data services including the facilities used in the provision of such services.

This bill will seriously undermine key local telephone market opening requirements contained in the Telecommunications Act of 1996 ("the Act"), and guarantee years of costly and time-consuming litigation. In addition, the bill does nothing to stimulate or assure deployment of advanced services in rural areas.

1. THE "TAUZIN/DINGELL" BILL THREATENS TELECOMMUNICATIONS COMPETITION BY GUTTING KEY MARKET-OPENING PROVISIONS IN THE 1996 ACT.

As proponents have conceded, *The Internet Freedom and Broadband deployment Act eliminates a major incentive for the Bell Companies to open their local markets to competition.* Section 271 of the Act is designed to open local phone markets. That section currently requires the Bell companies to comply with a 14-point market-opening checklist before being allowed to provide long-haul transmission of data or voice across LATA boundaries. The "Tauzin/Dingell" bill eliminates those requirements with respect to data services severely undermining efforts to fully open local markets for competitive entry.

Bell Companies in five states with widely varying demographics have already passed the Section 271 checklist. To date, New York, Massachusetts, Texas, Oklahoma, and Kansas can now provide cross-LATA voice and data services. There are more applications pending throughout the country. Indeed, an April 12, 2001 Precursor © Group estimate suggests that the Bell companies will file for Section 271 authorization in all but one of the remaining states where they currently lack authorization to move voice or data traffic across LATA boundaries by the second quarter of 2002. It suggests that all will have met the checklist requirements by the second quarter of 2003.

In the Qwest region, 13 states have begun region-wide OSS testing with competitors to solve the technical requirements of interconnection as a prelude to individual State PUC approval of Qwest entry into cross-LATA voice and data services. There is no urgent need to pass this bill and undermine the process that Congress envisioned in 1996.

2. NOTHING IN CURRENT LAW PREVENTS BELL COMPANIES FROM PROVIDING ADVANCED SERVICES TO CONSUMERS TODAY.

The current law does not prevent Bell Companies from providing broadband services to customers. They are only prevented from carrying data traffic across a LATA boundary. Indeed, the Bell companies have had digital subscriber line (DSL) technology for several years. However, only recently, in response to competitive pressure from cable modem service, have local telephone companies begun aggressively deploying DSL.

Local competition is the fastest way for consumers to obtain broadband services at competitive prices. The "Tauzin/Dingell" bill would actually inhibit the deployment of advanced services because it reduces the incentives for RBOCS to open their local markets to competition. In fact, Bell companies have already aggressively deployed broadband facilities in their home urban markets and are actively marketing high speed Internet access in the areas where they face competition.

In conclusion, we urge you not to cosponsor this bill and support the continued growth and innovation stemming from the pro-competitive measures in the 1996 Act that Congress worked so hard to pass. Competition will eventually eliminate the need for regulation of broadband services. Exempting these services from Section 271 requirements can only further delay the arrival of competition. *Congress should address broadband deployment to rural and urban areas directly and in a competitively and technologically neutral way – not by removing the Bell's incentives to open their local markets.*

We are enclosing a copy of a resolution passed by the National Association of Regulatory Utility Commissioners (NARUC) last March opposing this legislation. This resolution articulates the concerns that all state public service commissions have about this bill.

Thank you for your prompt attention to our concerns. If you have any questions about the status of broadband deployment or the status of local competition in your district, please do not hesitate to contact any one of us or your state commission. You may call Jessica Zufolo at 202-898-2205 in the NARUC Washington office for further details about how to reach us or your state commission colleagues.

Sincerely,



Joan H. Smith, Commissioner
Oregon PUC
Chair, NARUC Telecommunications Committee



Allan Thoms, Chairman
Iowa Utilities Board,
Vice Chair, NARUC
Telecommunications Committee

Attachment: NARUC Resolution



N A R U C
National Association of Regulatory Utility Commissioners

R E S O L U T I O N

Resolution Regarding Broadband Legislation In The 106th Congress

WHEREAS, The stated goal of the Telecommunications Act of 1996 (1996 Act) is to provide for a pro-competitive, deregulatory framework "designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition"; and

WHEREAS, Several bills being considered in Congress would amend the 1996 Act to allow the Bell Operating Companies (BOCs) to provide in-region, interLATA data services without first having to comply with the open market requirements of the 1996 Act, including the fourteen point "competitive checklist" requirements of Section 271; and

WHEREAS, Some of these bills also contain provisions that would limit State commissions from enforcing the open market requirements of Section 251 for data and advanced services, thereby denying States from fulfilling their obligations to regulate core telecommunications facilities used to provide both voice and data services, and to promote deployment of advanced telecommunications capabilities; and

WHEREAS, Soon the majority of traffic carried over the public switched network will be sent over packet-switched networks, and as such, technical distinctions between voice and data will become less relevant; and

WHEREAS, State commissions have been at the forefront of implementing and enforcing the open market requirements of the 1996 Act and in working with the BOCs and competitive local exchange carriers to advance BOC progress towards compliance with those requirements; and

WHEREAS, In approving Bell Atlantic's application to provide in-region, interLATA services in New York, the FCC made it clear that it will rely heavily on the factual record developed by State commissions and the States' rigorous analysis of the evidence in considering whether to grant future 271 applications; and

WHEREAS, The FCC also stated that it will work in concert with States to monitor post-interLATA entry compliance by the BOCs; and

WHEREAS, Southwestern Bell recently filed its Section 271 application with the FCC, following an extensive review by the Texas Public Utility Commission, and several other States presently are reviewing BOC compliance with Section 271 requirements; and

WHEREAS, In addition to the coordinated effort on Section 271, the States and the FCC have established a joint conference in order to cooperatively address the numerous and complex issues associated with the development and deployment of advanced telecommunications capabilities to all Americans, consistent with the objectives outlined in Section 706 of the 1996 Act; and

WHEREAS, This unprecedented level of coordination and cooperation by State and Federal regulators to (1) implement the open market requirements of the Act, (2) promote and ensure BOC compliance with Section 271, and (3) foster the deployment of advanced telecommunications capabilities to all Americans, demonstrates that the 1996 Act is working as Congress intended; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its March 2000 Winter Meeting in Washington, D.C., reaffirms its support for the 1996 Act; *and be it further*

RESOLVED, That the NARUC opposes federal legislation that would permit the Bell Operating Companies to provide data services across LATA boundaries without first fully opening their local markets to competition as currently required under the 1996 Act; *and be it further*

RESOLVED, That the NARUC further opposes federal legislation that would limit the ability of State public utility commissions from exercising their authority and resources to fulfill their obligation to regulate core telecommunications facilities used to provide both voice and data services and to promote deployment of advanced telecommunications capabilities.

*Sponsored by the Committees on Telecommunications and Finance and Technology
Adopted by the NARUC Board of Directors March 8, 2000*

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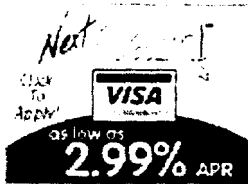
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The nation's regional telephone companies, or Baby Bells, agreed five years ago to open their lines to competition in exchange for the right to enter the long-distance phone market. That was then. Today, they still control 95% of the local phone market and, like all monopolies, stick their customers with ever-rising bills. They deploy a barrage of legal maneuvers and technical hurdles to block other companies from offering high-speed Internet services, known as digital subscriber lines (DSL), over their networks.

The 1996 Telecommunications Act, meant to bring competition into local phone service, clearly hasn't delivered. Most consumers have no choice but to pay high prices. Reps. W.J. (Billy) Tauzin (R-La.) and John D. Dingell (D-Mich.) say they intend to fix this by allowing the Baby Bells into the long-distance DSL business while keeping their local-service monopoly. It is a proposal without logic. The change would only strengthen the Bells' chokehold on local service and remove any incentive to compete and innovate.

The reasoning behind Tauzin's bill, HR 1542, is that the local Bells need an incentive to invest the billions of dollars it would take to upgrade their systems for DSL service, and giving them free range in long-distance data service would do the trick. A staunch supporter of the local Bells, Tauzin says high-speed Internet service is in its infancy and should not be hobbled by regulation.

The Bells already control at least 75% of the DSL market, using their monopoly muscle to keep others out. The only thing they can't provide is long-distance services, voice or digital, unless specifically authorized. They prevent others from competing in their market, as some 70 California Internet companies told the Federal Communications Commission earlier this month, by delaying or denying service to independent Internet providers, stealing the independents' customers and pricing them out of the market. The penalties for such conduct are so low that the Bells simply consider them part of the cost of doing business. If there are no competitors in some



markets, it is largely because the Bells drove them out.

Requiring competition in the local phone market by law has not so far provided sufficient incentive for the Bells to open up to newcomers. Lifting the mandate for the profitable long-distance DSL services would kill any hope of competition in the future. The Bells would keep on charging their consumers high prices regardless of the quality of their service.

No one except the phone companies would mourn the death of the Tauzin-Dingell bill.

To Take Action: Rep. Tauzin, (202) 225-4031 or www.house.gov/tauzin. Rep. Dingell, (202) 225-4071 or www.house.gov/dingell.

1 Search the archives of the Los Angeles Times for similar stories.

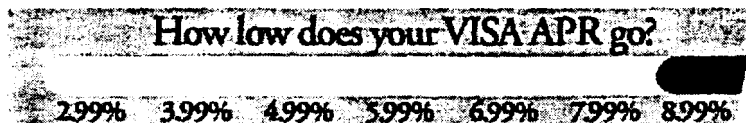
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For whom the Bells still toll

James Glassman

Rep. Billy Tauzin is making a fatal mistake regarding the nation's telecommunications. In a presentation to the Progress & Freedom Foundation, the powerful Commerce Committee chairman stated clearly and correctly that the primary threat to future economic growth is a continued meltdown in the information technology sector. Since March 2000, stock prices for telecommunications companies have dropped 70 percent, many have gone bankrupt and others are quickly running out of cash. A domino effect has knocked down the profits of the suppliers that serve them.

Mr. Tauzin was also exactly right when he said that a strong rebound in telecommunications requires two things: first, reliable energy supplies and, second, widespread availability of broadband to speed delivery of services from the current-copper crawl pace.

But Mr. Tauzin's remedy is all wrong. He thinks the best way to boost broadband is by releasing the regional Bell monopolies from their obligations under the Telecommunications Act of 1996. Such a move would kill competition and innovation, the keys to a rebound in both broadband and the economy as a whole.

What were the obligations? Five years ago, the Bells agreed to open their local loops to competitors. In exchange, the Bells would be able to get into the long-distance market.

Unfortunately, little has changed since 1996. The Bells dragged their feet, and they continue to have a chokehold on the "last mile" of phone line into the home. Some 95 percent of U.S. residences still have a regulated Bell monopoly as their local service provider. And, like all monopolies, the Bells have been raising their local rates and doing little to improve service.

Hope for real competition is rapidly running out. Several months ago one of the largest competitive local exchange carriers (CLEC), Covad Communications, cut back the planned expansion of its national digital subscriber lines (DSL) broadband network. Two weeks ago, another large CLEC, NorthPoint Communications, which is in bankruptcy, ended service to 100,000 customers. Rhythm NetConnections has run out of

money. And soon, PSInet, which laid a million miles of fiber optic through 28 countries and 90 metropolitan areas of the United States, could follow suit. As PSInet founder William Schrader says, the "dinosaurs" (as he calls the Bell monopolies) are winning because "deregulation has stopped, and they will become monopolists again because the competition can't compete with monopolists."

Indeed, the monopolists are only getting bigger. Thanks to mergers among themselves, the seven Bells plus non-Bell local giant GTE have become just four companies SBC, Verizon, Bell South and Qwest. And in addition to merging to reduce competition, they have reneged on the promises they made (to win merger approvals) to get into each other's territories. Verizon, formed when BellAtlantic merged with Nynex and GTE, announced last month it would slow down an already sluggish expansion into other Bells' regions. And SBC says it won't come close to its target set by the Federal Communications Commission when it merged with Ameritech, the Midwest monopoly to enter 30 major-city markets.

Yet, as far as Mr. Tauzin is concerned, it is the Bells that are the victims. So, to make things equal, he would let the Bells get into the most lucrative part of the long distance-market data transmission without having to open up their local loops. He would also release them from their promises to compete with each other.

What will happen if the powerful local Bells get what they want from Mr. Tauzin and Congress? History shows it won't be the expansion of affordable broadband. In the past, the Bells tried to kill the Internet in its crib by putting per-minute charges on local calls made to the Internet Service Providers (ISPs) that connected consumers to the Internet. Just such policies in Europe and Japan have curbed the Internet's growth there, to those nations' economic detriment. In the United States, brave CLECs stepped up to the plate and gave those ISPs good low-cost service.

The Bells also kept DSL service under wraps for more than a decade, not wanting to divert business from their high-speed, high-cost T1 lines. Only when the upstart CLECs began delivering it to customers at affordable prices did the Bells start to do the same. And now that competition from the upstarts is waning (as the Bells drag their feet on local connections, file lawsuits and renege on agreements to pay their "reciprocal compensation" bills), the Bells are making DSL service less affordable once again. A competitive market would not allow SBC to hike prices for its DSL service 25 percent, as it did last month.

To achieve deregulation, the answer is to break the Bells up not geographically, but functionally, as some states, like Pennsylvania are already trying to do. Each local phone company should be divided into two businesses: wholesale and retail. The wholesale side would sell local service both to its own retail side and to

any other company that wanted to purchase that service. That's how to achieve real competition, to boost quality and push down prices.

Giving in to the Bell's' demands for a rollback of the Telecommunications Act of 1996 is a prescription for disaster that will throttle the prospects of the New Economy for decades to come.

James Glassman is the host of www.TechCentralStation.com. He also wrote about the telecommunications industry in late December 2000.

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